

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROOSEVELT RAYFORD, #61210-065 §
VS. § CIVIL ACTION NO. 4:16cv540
UNITED STATES OF AMERICA § CRIMINAL NO. 4:02CR00088-006

ORDER OF DISMISSAL

Petitioner Roosevelt Rayford, a prisoner confined at F.C.I. Three Rivers, brings this motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation (Dkt #21) concluding that the motion should be denied. Rayford has filed objections (Dkt #23).

Rayford is seeking relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). He was not, however, convicted of the offense of felon in possession of a firearm and as an armed career criminal; thus, Magistrate Judge Nowak correctly found that *Johnson* does not apply to him. To the extent that he is seeking relief based on an extension of *Johnson* to the sentencing guidelines, the Fifth Circuit has rejected such arguments and found that it is bound by its own precedent unless and until that precedent is altered by a decision of the Supreme Court. *In re Harris*, No. 16-40938, slip op. at 1 n.1 (5th Cir. Aug. 16, 2016) (citing *Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir. 1986)). Rayford's objections once again focus on the sentencing guidelines, but the Fifth Circuit has rejected such arguments. The Report and Recommendation correctly explains the current state of the law in the Fifth Circuit, and this Court is bound by Fifth Circuit precedent.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having

made a *de novo* review of the objections raised by Rayford to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Rayford's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that Rayford's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**.

SIGNED this 2nd day of February, 2017.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE